IN THE HIGH COURT OF BOMBAY AT GOA
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MISCELLANEOUS CIVIL APPLICATION NO. 343 OF 2003
IN WRIT PETITION NO. 192 OF 2001

Mrs. Urmila Dias,
r/o A-9 Calisto Mansion,
Near Hotel Nova Goa,
Panaji, Goa. ... Applicant.

Versus

1. State of Goa,
through the Chief Secretary,
having its office at Secretariat,
Panaji, Goa,

2. Director of Education,
Government of Goa, having
its office at Directorate
of Education, 18th June Road,

3. Our Lady of Rosary High
School, Government of Goa,
having its office at Directorate
of Education, 18th June, Road,
Panaji, Goa,

4. Mr. Rohit Lobo, r/o
Ocean Palms, No.1
La Marvel Colony,
Dona Paula, Panaji, Goa, and

5. Holy Family High School,
Porvorim, Bardez, Goa. ... Respondents.

Shri S. S. Kantak with Ms. Rakhi M. Chodankar, advocates for the applicant.

Smt. W. Coutinho, Govt. Advocate for respondent nos. 1 & 2.

Shri V. Menezes, advocate for respondent no.4.

CORAM : F. I. REBELLO &
P. V. HARDAS, JJ.

DATE : 2nd July, 2003.

ORAL ORDER (Per Rebello, J.)

This is an application by the applicant praying that respondent no.4 be directed to give his consent for

admitting the child, Miss Sonia, in St. Francis Xavier High School, Mapusa and alternately, for respondent no.5 to issue a school leaving certificate to the child in order to admit her in St. Francis Xavier High School, Mapusa, and/or such other relief.

The child Sonia was born during the subsistence of a marriage between the applicant and respondent no.4, who are since divorced. A Writ Petition was filed before this Court, being Writ Petition No. 192 of 2001, which came to be disposed of by this Court. Consent Terms were also filed therein which were recorded. One of the terms was that the petitioner, who is the applicant herein, shall not remove Sonia from the Holy Family High School in Porvorim, without prior consent of respondent no.4. An order came to be passed on 5th July, 2001, based on the said Consent Terms.

2. The applicant herein addressed a letter on 16th June, 2003, to respondent no.2, setting out therein that the child Sonia wants to study as a boarder in St. Francis Xavier High School, Mapusa. It is also set out therein that the applicant has applied for a job overseas and would be going shortly.

3. When the application came up for hearing, learned counsel for respondent no.4 was heard. It was contended that considering the Consent Terms, this Court

ought not to consider the application. It was further contended that it is in the interest of the child herself that she should not be shifted from school to school. It is pointed out that the child was first in the Rosary High School at Dona Paula, from where she was shifted to Porvorim and is now being shifted to another school. This change of schools, it is contended, would not be in the interest of the child herself. Various other contentions have been raised.

4. It is not necessary for us to deal with these various contentions as respondent no.4 has moved an application before the Civil Court for custody of the child. It would, therefore, be not proper for us to go into the various issues involved which can be appropriately decided by the Civil Court. This Order shall not influence the Civil Court in the custody matter. The Civil Court to decide the same on its own merits.

5. All that the Court would be considering is whether it is in the interests of the child that she be allowed to be admitted to St. Francis Xavier High School, Mapusa. A certificate has been annexed to the application from the Head Mistress of the school addressed to the Director of Education, seeking permission to admit the child to the school. On behalf of respondent no.2, Director, they have given their no objection. The learned counsel for respondent no.4 at the Bar was asked, apart from this

objection, whether otherwise the school would be unsuitable in the context of the child's education. It is fairly conceded that that would not be so.

Considering the age of the child and the fact of the separation of the applicant and the respondent no.4, we feel it would be in the larger interests of the child herself that she goes to a boarding school where she can pursue her studies until the 10th Standard. We make it clear that whilst considering the issue of permission, it is with a condition that the child hereinafter will not be shifted from the new school in the larger interests of the child herself. This permission is being granted subject to that condition. The courts in such matters, irrespective of the contract between the parties, have to look at the larger interests of the child itself. Therefore, even apart from the fact that the parties had arrived at some agreement, that agreement insofar as the studies of the child are concerned, in our opinion on facts and circumstances and for reasons contained in the letter of 16th June, 2003, will have to give way to the larger interests of the child. The terms were accepted by the Court by its order. It will, therefore, be open to the Court to consider variation of the terms in the larger interest of the child.

On behalf of respondent no.4, learned counsel had pointed out that the applicant should give her correct

address so that respondent no.4 will be in a position to contact the child. On instructions, the learned counsel for the applicant has given the following address as the address where the child could be contacted when the child would be at home. The address is:

Flat No. 202,
Nikita Enclave,
Near Vista to Rio,
Nova Cidade,
Porvorim.

This address will not be changed unless this Court is first intimated about the same and directions to that effect are obtained.

We further direct that after the child is admitted in St. Francis Xavier High School, the child will not be shifted from that school unless there are compelling reasons, till the child completes her 10th Standard and that too after obtaining the permission of this Court.

6. With the above directions, we grant permission and accordingly, the application to the extent of permitting the child to be shifted to St. Francis Xavier High School, Mapusa, on the terms and conditions set out above, is allowed. Application stands disposed of accordingly.

P. V. HARDAS, J. F. I. REBELLO, J.